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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. 470

NORTH GERMAN LLOYD, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 22, 1926

(30,444)

(30,444)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 479

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

NORTH GERMAN LLOYD

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On April 5, 1923, the plaintiff filed its original petition.

On May 26, 1923, the defendant filed a demurrer to said petition.

Subsequently, to wit, on February 19, 1924, by leave of court, the plaintiff filed an amended petition. Said amended petition is as follows:

II. AMENDED PETITION—Filed Feb. 19, 1923

To the Honorable the Court of Claims:

The claimant, North German Lloyd, respectfully represents:

1. That it is, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the Free and Hanseatic City of Bremen in Germany and of Germany, named and known in the German language as Norddeutscher Lloyd and in the English language as North German Lloyd, and is, and was at all times hereinafter mentioned, a citizen or subject of the German Government.

2. That the German Government accords to citizens of the United States the right to prosecute claims against it in its courts.

3. That continuously from the year 1857 to about the end of the month of July, 1914, claimant maintained regular steamship services [fol. 2] between its home port of Bremen and other foreign ports and the port of New York in the United States of America, which services were interrupted at the time last mentioned by the outbreak of war between Germany and other European powers.

4. That at various times between the years 1857 and 1900 claimant had acquired by purchase certain adjoining parcels of land and real estate, with piers and other improvements erected thereon, situate on the Hudson River in the City of Hoboken, County of Hudson and State of New Jersey, and used the same as its terminal at the port of New York.

5. That in 1900 its docks and piers were entirely destroyed by fire, and as a convenience in the rebuilding of the same claimant caused to be organized, under the laws of the State of New Jersey, a corporation named and known as the North German Lloyd Dock Company, which said last named corporation was in existence at all the

times hereinafter mentioned, and all of the stock of which was owned and controlled by claimant and stood in the name of claimant, with the exception of three shares which were controlled by complainant but stood in the names of three individuals to qualify them as directors of said corporation.

6. That after the organization of said North German Lloyd Dock Company claimant conveyed to it all of its above mentioned real estate and caused to be constructed on the same an entirely new steamship terminal, consisting of three large piers, one large bulk-[fol. 3] head building, a superintendent's residence, and various other buildings, structures and improvements, in which were installed machinery, appliances and equipment essential to constitute a complete and fully equipped steamship terminal, the cost thereof being paid in part by $2,000,000 raised upon a mortgage on said property given by the said North German Lloyd Dock Company, and as to the remainder by funds advanced by claimant.

The newly constructed steamship terminal described in the last paragraph is the same property that is described in an Act of Congress approved March 28, 1918 (being a section of the Urgent Deficiency Act approved on said date) as "the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company," by which description the said property will be hereinafter referred to.

7. That by a written lease dated March 20, 1903, the said North German Lloyd Dock Company let and demised the said premises and property mentioned in the preceding paragraph to the claimant, North German Lloyd, for a term of 999 years, and claimant at once entered into possession of said property under said lease.

8. That on April 6, 1917, claimant was in exclusive and peaceable possession of the said docks, piers, warehouses, wharves and terminal equipment and facilities on the Hudson River, under and by virtue of the lease mentioned in the preceding paragraph.

[fol. 4] 9. That on said April 6, 1917, said docks, piers, warehouses, wharves and terminal equipment and facilities on the Hudson River were entered upon by the United States of America, acting by and through the War Department and the military forces, and possession thereof taken by the United States of America (without, however, excluding claimant from said premises), and troops were quartered in and upon said premises and property and other use was made thereof by the United States of America. On or about April 20, 1917, the United States of America, acting by and through the War Department and the military forces, and under the authority of the Act of Congress of August 29, 1916, c. 418, Sec. 1, (39 Stat. 645), assumed complete and exclusive possession, control and use of the said premises and property and ejected and excluded claimant, its officers, agents and servants therefrom; and claimant has ever since been excluded from and deprived of the possession and use of said premises and property, and the United States of America,

by itself and its lessees, has had the exclusive use and possession thereof.

10. That on June 28, 1918, the United States of America, acting by and through the President of the United States of America, and under authority, or color of authority, of the Act of Congress first above mentioned, approved March 28, 1918, expropriated the said premises and property hereinbefore mentioned and the title thereof, and took unto itself title thereto.

11. That on December 3, 1918, the United States of America, acting by and through the President of the United States of America [fol. 5] and under authority, or color of authority, of said Act of Congress, approved March 28, 1918, awarded compensation for the title of said premises and property by it expropriated as aforesaid.

12. That no compensation has at any time been awarded or paid by the United States of America for the use of said premises and property from the date of the original taking of possession and use thereof by the United States of America, namely, April 6, 1917, to the date that the same was expropriated and title thereto taken by the United States of America, namely, June 28, 1918; nor for the period from the last mentioned date to the date of the award of compensation for the taking of title, namely, December 3, 1918.

13. That the use and occupation of said premises and property during the periods April 6, 1917, to June 28, 1918, and June 28, 1918, to December 3, 1918, was reasonably worth the sum of three thousand four hundred dollars ($3,400) per day, and claimant, had it not been deprived of the use, possession and control of said premises and property as herein mentioned, could have leased the same for the sum aforesaid.

14. That claimant hereby claims:

(a) For the use and occupation of its premises and property hereinbefore mentioned from April 6, 1917, to June 28, 1918, the sum of three thousand four hundred dollars ($3,400) per day, making a total of one million five hundred and twenty-three thou- [fol. 6] sand two hundred dollars ($1,523,200) for said period.

(b) For the use and occupation of the said premises and property from June 28, 1918, to December 3, 1918, the sum of three thousand four hundred dollars ($3,400) per day, making a total of five hundred and thirty-seven thousand two hundred dollars ($537,200) for said period.

(c) In the alternative, if the claim last stated shall not be allowed, claimant claims for the use and occupation of said premises and property during the period June 28, 1918, to December 3, 1918, such amount of money as will represent and be equal to legal interest for said length of time on the value of said premises and property as established by the award of compensation made therefor by the

President of the United States of America by his Proclamation issued December 3, 1918.

15. This suit is founded upon:

(a) The Constitution of the United States of America.

(b) The said Act of Congress of August 29, 1916, c. 418, Sect. 1 (39 Stat. 645).

(c) An implied contract with the Government, arising out of the facts hereinbefore stated, to make compensation for the use of said property from the date the United States of America took possession thereof until the date the United States of America took title thereto and awarded compensation for the title so taken.

(d) A claim, not sounding in tort, for unliquidated damages [fol. 7] for the reasonable value of the use and occupation of claimant's property herein described, prior to the acquisition of title thereto by the Government, and from the date of such acquisition of title until the date of the award of compensation therefor pursuant to the Act of Congress in that suit made and provided.

16. That no action has been had on this claim in Congress or by any of the Departments, nor has any request or application for action concerning the same been made; that the claimant, North German Lloyd, is the sole owner of this claim and no other person or corporation is interested therein; that no assignment or transfer of this claim or of any interest therein has been made; that claimant is justly entitled to the amount herein claimed from the United States of America after allowing all just credits and offsets (regard being had also to the fact that claims b and c stated in paragraph 14 hereof are made in the alternative only); that Claimant had not in any way voluntarily aided, abetted or given encouragement to rebellion against the United States; and that claimant (and its agent executing this amended petition in its behalf) believes the facts as stated in this amended petition to be true.

17. That neither claimant nor any assignee of claimant has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States, [fols. 8 & 9] which suit or process is based upon the facts herein stated or any of such facts, or has reference to the subject matter of this amended petition.

18. That the original petition herein was filed in the Court of Claims within six years after the claims herein set forth first accrued.

19. That this amended petition is signed by claimant's duly appointed attorney of record, and, claimant being a body corporate, is also signed and verified in its behalf by its general agent and attorney in fact in the United States thereunto duly authorized, and

claimant makes profert of its said agent's power of attorney authorizing him to act in its behalf, and makes reference to a true copy of said power of attorney which is annexed to and made part of the original petition filed herein as aforesaid.

North German Lloyd, Claimant. Heinrich Schuengel, General Agent and Attorney in Fact. Edgar W. Hunt, Attorney of Record.

Certificate to foregoing paper omitted in printing.

[fol. 10] III. Defendant's Demurrer—Filed May 26, 1923

(Note.—This demurrer was allowed to stand to the Amended Petition.)

Defendant demurs to the petition in the above entitled case for the reason that it does not state a cause of action against the United States.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Attorney.

IV. Argument and Submission of Demurrer

On February 18, 19 and 20, 1924, the demurrers in this and similar cases, were argued by Messrs. W. F. Norris and Herman J. Galloway, for the defendants, and by Mr. Edgar W. Hunt, on February 19, for the plaintiff in this case, and the demurrer was submitted.

V. Order of Court Dismissing Amended Petition, and Memorandum—Entered March 17, 1924

This case was submitted upon the defendant's demurrer to the plaintiff's petition as amended. On consideration whereof, the court being of opinion that the demurrer is well taken, it is adjudged and ordered this 17th day of March, 1924, that the said demurrer be and the same is sustained, and the amended petition is dismissed.

Memorandum

The court decides it has not jurisdiction of this case, and refers for its reasons stated at length in its opinion in Deutsch-Australische Dampfschiffs-Gesellschaft Case, No. C-576, decided March 17, 1924. See act of March 28, 1918, 40 Stat., 458, and President's proclamation (40 Stat., 1804) June 28, 1918, and the order by the President in his proclamation of December 3, 1918, 40 Stat., 1914, that com-

pensation for the property mentioned in the petition be paid to the Alien Property Custodian.

[fol. 11] VI. Opinion of the Court Referred to in Court's Memorandum—Decided March 17, 1924

Deutsch-Australische Dampfschiffs-Gesellschaft

v.

The United States

Campbell, Chief Justice, delivered the opinion of the court:

This case is before the court upon the defendant's demurrer to the petition, which in substance avers: Plaintiff is a corporation organized and existing under the laws of Germany, and is a citizen of Germany, and at the times mentioned in the petition was engaged in the business of operating steamships, of which it was the owner of many, its principal office and place of business being at Hamburg, Germany. In or about the month of May or June, 1917, pursuant to authority granted by the joint resolution of May 12, 1917 (hereinafter set forth), the President of the United States "took over to the United States the immediate possession and control" of the plaintiff's steamers which then were within the jurisdiction of the United States or its insular possessions and which were the sole and exclusive property of plaintiff and in its possession. The names of the six steamers and the alleged fair and rea-onable value of each is stated, and the aggregate value was $9,022,000.

Also it is alleged that certain stores and equipment belonging to the several steamers were also taken over, and that by the taking over of the possession and control of the steamers in the manner stated and "thus appropriating the said steamers to its own use, enjoyment, and benefit," the United States impliedly agreed with plaintiff to pay plaintiff the fair and reasonable value of said steamers, and also for their stores and equipment, but that they have wholly failed and refused to pay the same. It is further averred that the survey required by section 2 of the joint resolution has been duly made and report thereof filed with the Secretary of the Navy. The claim is for the alleged aggregate value of the steamers besides the value of their coal, stores and equipment. A further claim of $10 per deadweight ton per month for each steamer as the value of its use is made in the petition, but the plaintiff abandoned this claim, insisting, however, upon the alleged value of its property. It was explained in argument that the several steamers, with the exception of those in Cuban harbors, were all in American harbors at the outbreak of the war. They were merchant vessels which had sought asylum in these harbors and were left unmolested until the United States entered the war. There were fifteen other suits involving vessels of the al-

leged aggregate value of over $30,000,000 submitted with this one, besides a large number of similar cases heard at the same time.

[fol. 12] On April 6, 1917, the Congress adopted the joint resolution declaring the existence of a state of war between the United States and the Imperial Government of Germany. On that day some of the vessels in question were taken into possession and control by agents of the United States Government. On May 12, 1917, the Congress adopted a joint resolution as follows:

"Chap. 13. Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

"Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

By proclamation dated June 30, 1917, which incorporated the joint resolution of May 12 and mentioned by name 69 German ships, it was ordered by the President that "through the United States Shipping Board there be taken over to the United States the possession and title of the aforementioned vessels. The United States Shipping Board is further hereby authorized to repair, equip, and man the said vessels; to operate, lease, or charter the same in any service of the United States or in any commerce, foreign or coastwise; and to do and perform any and all things that may be necessary to accomplish the purposes of the joint resolution above set forth."

A question presented at the threshold is whether the Court of Claims has jurisdiction in the premises. The plaintiff contends that the allegations bring its case within the scope of section 145, Judicial Code, conferring power to hear and determine claims founded upon the Constitution or any law of Congress, or upon implied contract with the United States. The action is not founded upon the Constitution or a law of Congress. The joint resolution authorized the President to take title to the vessels and he did so. It does not in terms declare a liability of the Government or of itself create a right in plaintiff. It was said by Judge Richardson in Ludington's case, 15 C. Cls. 453, that to sustain a claim as one founded on a law of Congress there must be "a statute liability on the part of the Government." See Hukill case, 16 C. Cls. 562. In Hvoslef case, [fol. 13] 237 U. S. 1, 11, the statute authorized and directed the payment of certain claims. The act construed in the Medbury case, 173 U. S. 492, created the right to payment.

Where suits for compensation have been maintained because of the taking by the Government of private property for public use they were not founded upon the Constitution or the Fifth Amendment or a law of Congress, but upon an implied contract arising out of the circumstances of the taking. In United States v. Great Falls Mfg. Co., 112 U. S. 645, one of the earliest cases on the subject, the principle was announced, and it has been repeatedly reaffirmed. In United States v. North American Transportation & Trading Co., 253 U. S. 330, 335, it was said: "The right to bring this suit against the United States in the Court of Claims is not founded upon the Fifth Amendment, but upon the existence of an implied contract entered into by the United States." See Tempel case, 248 U. S. 121, 129; Peabody case, 231 U. S. 530, 539; Klebe case, — U. S. —, decided November 12, 1923 (57 C. Cls. 160). The circumstances of the case may rebut the implication of such a contract. Horstmann case, 257 U. S. 138, 146; Ball Egineering Co. v. White & Co. 250 U. S. 46, 57; Klebe Case, supra.

It was the action taken in virtue of the joint resolution that deprived plaintiff of its property, and the question is whether the circumstances gave rise to the implication of a contract of which the Court of Claims has jurisdiction. Manifestly the joint resolution was an exercise of the war power of Congress. It finds support in the constitutional provision that empowers Congress to declare war and to make rules concerning captures on land and water. Art. 1, § 8, cl. 11. See Stoehr v. Wallace, 255 U. S. 239, 242; Commercial Trust Co. v. Miller, 262 U. S. 51; Brown v. United States, 8 Cranch 110, 126; Miller v. United States, 11 Wall. 268, 305; Fischer v. Palmer, 259 Fed. 355. Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852. Several of these cases deal with the trading with the enemy act, but that act granted broad powers to the Alien Property Custodian in dealing with enemy property, and if the property involved in this and similar suits had not been taken, as it was, it could admittedly have been taken by the Alien Property Custodian, in which event there would have been no jurisdiction in this court.

In Brown v. United States, 8 Cranch 110, the Circuit Court had condemned certain pine lumber seized as enemy property. The court's action was sought to be sustained upon the mere fact of the declaration of war. This the Supreme Court said was not sufficient, but that legislative action was essential to confer upon court's authority to condemn enemy property. Chief Justice Marshall said page 122: "That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but can not impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court." The court could not pronounce a sentence of condemnation in the absence of legislative authority so to do. In the instant case the court is [fol. 14] asked to order compensation for enemy property seized by authority of a legislative act that is silent on the question of jurisdiction. As already stated, the taking of private property for public use by the Government and for which the Fifth Amendment requires compensation to be made, falls within the class of claims founded upon implied contract, and the duty imposed by this amendment is an essential element in raising the necessary implication of an agreement to pay.

But the limitations or restrictions of the Fifth Amendment do not affect the exercise of the war power conferred upon Congress when enemy property is taken. It was said in Miller v. United States, 11 Wall. 268, 304, that where the statutes were "an exercise of the war power of the Government, it is clear they are not affected by the restrictions imposed by the Fifth and Sixth Amendments." (See Herrera case, 222 U. S. 558, 572.) It was added: "The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right." See Morrisdale Coal Co. Case, 55 C. Cls. 310, 315; Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852, 858; Fischer v. Palmer, 259 Fed. 355, 358.

In Green's Case 10 C. Cls. 466, the facts were that the plaintiff, a citizen of the United States, was domiciled in Nashville, Tennessee. On the 16th day of February, 1862, while the capture of Nashville by the United States Army was imminent and expected, plaintiff went south with a large amount of his firm's moneys, which he took for investment. "While absent from his residence, he was not engaged in giving aid or encouragement to the rebellion, other than

such as might arise from his voluntarily leaving his domicile and remaining within the Confederate lines and having commercial dealings with the people." When he left Nashville he was the owner of certain rent-producing buildings occupied by tenants and left in charge of his agent. The agent continued to collect the rents and care for the buildings until December, 1864, when they were seized by the special supervising agent of the Treasury as abandoned property, who collected the rents until July 8, 1865. The suit brought in October, 1870, was to recover these rents. The authority for taking the property was the act of July 2, 1864, 13 Stat. 375, which did not in terms prescribe a remedy. The opinion of the court, delivered by Judge Nott, says that "the case presents, with unusual clearness, the question whether the Government is judicially liable for any of the war measures resorted to in the late rebellion other than the liability created by the abandoned or captured property act," and states the question to be whether the Government is liable for the acts of its officers, done under color of its authority within the insurrectionary district, where the party injured was loyal and the circumstances were such as would give a citizen in time of peace a right of action against the Government under the mandate of the Constitution that private property should not be taken for public [fol. 15] use without just compensation. Declaring that it made no difference in the applicable rule whether the property was taken by the Army or the Navy, or by an officer of the Treasury, the court concluded that the Government was not liable upon implied contract. The court said (p. 471): "It is inevitable that a war must be prosecuted rigorously, and it is desirable that it be prosecuted as little to the injury of a government's own citizens as possible. In the prosecution of a war the discretion of a government, so far as the enemy is concerned, takes the place of ordinary constitutional restrictions or statutory provisions."

To relieve the rigor of the situation, the act of March 12, 1863, commonly called the abandoned or captured property act, was enacted. It was a beneficent piece of legislation, and, speaking of it, the court say in Klein's Case, 13 Wall. 128, 138: "There is, so far as we are aware, no similar legislation mentioned in history." It created a right where none existed before, Anderson Case, 9 Wall. 56, and authorized suits under specified conditions for the proceeds of sales of property that had been taken or seized as "enemy property." Although it was recognized, as was said in Lamar v. Brown, 92 U. S. 187, 195, that the United States, during the Civil War, occupied the position of "both belligerent and constitutional sovereign," it was also recognized, and uniformly held, that it was only in virtue of the act mentioned that even the loyal citizen, whether he resided in the one or the other of the sections, could assert in the Court of Claims compensation for his property that had been seized or appropriated as enemy property. The theory of an implied contract arising out of such seizure or appropriation finds no support in the decided cases. In Young's Case, 97 U. S. 39, 67, it was said of the British subject, in whose right the suit was brought:

"Collie has been deprived of no right he ever had. Neither he nor any one similarly situated has ever been permitted to sue the United States in their own courts upon such a claim." See Klein Case, 13 Wall. 128, 137; Moore Case 10 C. Clys. 375, 383; Haycraft Case, 22 Wall. 81, 92; Hijo Case, 194 U. S. 315.

In the Herrera Case, 43 C. Cls. 430, the plaintiff insisted that there was an implied contract, but this court held it had not jurisdiction under the Tucker Act, and quoted from the Hijo Case, 194 U. S. 315, 320, where it is said: "The vessel was therefore to be deemed enemy's property. It was seized as property of that kind, for purposes of war and not for any purposes of gain." The judgment was affirmed by the Supreme Court. In the course of their opinion, reference is made to the modern rules of war, stated by Kent (1 Kent, 92, 93), and which are in substance urged here, and the opinion proceeds: "If the record presented such a case, the question could be raised whether it presented one for judicial cognizance, even if a court could share the indignation which the learned commentator says all mankind would feel. It is certain that the court's power can not be enlarged by its emotions." Herrera Case, 222 U. S. 558, 572.

The second section of the resolution directed that a survey be made, the results of which should be competent evidence in any proceedings for compensation. This provision is entirely consistent with the idea that Congress intended to reserve for future determination any question of compensation. It falls short of conferring power upon [fol. 16] this court to determine it. It is significant when the policy of legislation during the war is considered that provision was made for action against the Government in all cases where it was intended to confer the right. Notwithstanding this court had the power to hear and determine suits against the Government conferred by section 145 of the Judicial Code, the numerous statutes authorizing requisitions and the taking of private property expressly designated the court where suits could be brought. Some of these conferred jurisdiction on the Court of Claims; some on District courts, and some on both of these courts. Mr. Justice Brandeis, in the Pfitsch case, 256 U. S. 547, 552, says: "A survey of the war legislation permitting the seizure of property discloses that Congress has established three distinct jurisdictions for the purpose of suit against the United States for compensation." He mentions 25 different instances. The Government can not be sued without its consent and the power to hear and determine suits against the United States should not and does not rest in mere inference or implication. It was said in Haycraft's case, 22 Wall. 81, 92: "A sovereign can not be sued in his own courts except with his consent. This is an action against the United States in its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution." Every court must take notice of the limits of its jurisdiction. Reid case, 211 U. S. 529. It was suggested in argument in some of this class of cases that the Government took charge of the railroads under provisions of the national defense act, which did not prescribe a method for ascertaining compensation.

But this action taken in an emergency was followed by a statute, which provided the necessary forum. The trading with the enemy act authorizing the Alien Property Custodian to take over and to dispose of enemy property did not permit suits by the enemy owners. Nor does the joint resolution of May 12 authorize suits by the German owners of the vessel. If this resolution can be made the basis of the suits they could have been instituted as soon as the President took action under it. Can it be supposed that the Government intended to open its courts to enemies seeking compensation for property taken from them while the war was yet flagrant? The history of the enactment rebuts any such idea. A joint resolution was introduced and referred in the Senate and in the House. As reported to the Senate by its committee, the joint resolution contained five sections. (Cong. Rec., vol. 55, pt. 2, p. 1572.) The first two sections contained all that was finally adopted. The three other sections purported to authorize suits to be brought by parties interested in the vessels and had provisions relative to suits. By section 5 the suits could be brought in the Court of Claims. All of sections 3, 4 and 5 thus reported were stricken out by amendment in the Senate. (Cong. Rec., vol. 55, pt. 2, p. 1575.) An amendment proposed by Senator Knox authorizing the President to "requisition" the vessels was voted down. (Cong. Rec., vol. 55, pt. 2, pp. 1575, 1576.) The joint resolution as amended was adopted by the Senate, and in that shape was sent to the House, where it was taken up, superseding the one on its calendar, and passed as it came from the Senate. This definite action by the Senate, concurred in by the House, confirms the view that there was no intention to authorize [fol. 17] suits in the Court of Claims on account of the seizure of these vessels. See Pfitsch case, supra.

The plaintiff argues that the United States did not confiscate or intend to confiscate the property and that the taking must consequently be referred to the power of eminent domain with a duty to make compensation. What we have said sufficiently answers this contention. We do not think it necessary to assert that there was a confiscation, nor to deny that the Congress may have intended that the United States would at some time account for the vessels or their ascertained value. If this court is without jurisdiction, its conclusions upon these questions would probably be coram non judice. The result, however, in this case, would not be altered if the proper conclusion were that the taking over of the vessels amounted to a sequestration of them. The act authorizing their seizure did not confer power on the Court of Claims to entertain the present suit, nor does its general jurisdiction extend to suits of this kind. It was said in Haycraft's case, supra: It is for Congress, not the courts, to determine whether this jurisdiction shall be extended and other remedies provided."

The demurrer should be sustained. And it is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge, and BOOTH, Judge, concur.

[fol. 18] VII. PLAINTIFF'S APPLICATION FOR APPEAL—Filed June 3, 1924

From the judgment rendered in the above-entitled cause on the 17th day of March, 1924, in favor of the defendant, the claimant, by its attorney, on this 3rd day of June, 1924, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

Edgar W. Hunt, Attorney for Claimant.

Ordered: That the above application for appeal be allowed as prayed for.

By the Court.

Entered June 16, 1924.

[fol. 19] [Title omitted]

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of the case on demurrer; of the order of the court dismissing the amended petition, with memorandum by the court; of the opinion of the court referred to in court's memorandum; of the plaintiff's application for an appeal and of the allowance by the court of said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this Twentieth day of June, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of the Court of Claims.)

Endorsed on cover: File No. 30,444. Court of Claims. Term No. 479. North German Lloyd, appellant, vs. The United States. Filed June 25th, 1924. File No. 30,444.